Supreme Court, U.S.
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No. 99-490

In The

Supreme Court of the United States

WM. JONATHAN GRIDER and LESA P. WATSON,

Petitioners,

vs.

CITY OF LOUISVILLE, KENTUCKY
(a Kentucky city of the First Class),

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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I. STATEMENT OF CASE

Petitioners' statement of the case is essentially a verbatim recitation of the facts as described by the court below. For the most part, Respondent has no quarrel with Petitioners' statement of the case. Respondent, however, disagrees with Petitioners' characterization of the Sixth Circuit's holdings in the case below. Pet. 17. The following points should be noted:

1. The Respondent did *not* ban free association of attendees at the two rallies. Pet. App. 22-23.

2. The Respondent did not attempt to ban all non-official speakers at the concurrent rallies. As the court below explained, the Respondent only prohibited non-scheduled speakers from interfering with speakers scheduled by organizers of each rally. People who otherwise wished to express themselves had ample alternate channels of public communication. Pet. App. 24-26.

3. As Petitioners concede (Pet. 13), the "outer perimeter" of the KKK Rally Detail encompassed a several city block radius surrounding the inner perimeter. There is no evidence, however, that the entire downtown business district was closed.

II. REASONS FOR DENYING WRIT

Petitioners have offered no compelling reasons for this Court to review the decision below. The decision below was a plainly correct application of settled law and no conflict among the circuits is even alleged. Sup.Ct.R.10.

1. With regard to their Question I, Petitioners point to no error by the court below. Petitioners identify no relevant decision of this Court with which the decision below conflicts. Petitioners concede that the decision below is consistent with decisions of other circuit courts which have addressed the issue of magnetometer searches of attendees at public rallies based on the facts presented. There is no cause for this Court's review.

2. With regard to their Question II, Petitioners again misperceive the nature of the ban with which they take issue. By complaining that authorities "flatly" prohibited "contemporaneous association" but permitted "sequential association," Petitioners are simply upset that they could not be in two different places at the same time. Petitioners concede that they could travel back and forth between the two rallies. Petitioners cite no authority that remotely suggests that the separation of opposing groups infringed on their constitutional rights. Persons who wished to attend both rallies were, in fact, able to revisit both rallies as often as they desired.

3. Petitioners' Question III is a fact-bound claim that authorities prohibited all public speech by non-scheduled speakers in the separate rally areas. The Sixth Circuit held that the restriction was a classic content-neutral time, place and manner regulation; that the restriction was narrowly focused to promote the government's significant public interest in fostering the privileges of free expression and assembly of all participants; that there was no evidence that either Petitioner had endeavored to secure placement on the official speaker's roster at either rally; and that the formally slated speakers possessed a protected interest in addressing

their audience under orderly and audible conditions. Pet. App. 23-26.

Petitioners offer no suggestion that the decision below misstated a rule of law or departed from precedent contained in relevant decisions of this Court. At most, Petitioners vaguely assert error in how the Sixth Circuit applied controlling law to the set of facts before it. Accordingly, there is no cause for this Court's review.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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